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No. 80-1070

In the Supreme Court of the United States

OCTOBER TERM, 1980

DONNA RIDGWAY AND PRUDENTIAL INSURANCE COMPANY OF AMERICA, PETITIONERS

v.

HAYLEY D. RIDGWAY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether federal law prohibits a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy, for the benefit of the children of a deceased serviceman's first marriage, where the serviceman designated his second wife as the policy beneficiary, in violation of the terms of a divorce decree and an underlying property settlement requiring him to name the children as beneficiaries.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	
A. The Servicemen's Group Life Insurance Act	2
B. The present proceedings	7
Summary of argument	10
Argument	
A valid designation of a beneficiary under the Servicemen's Group Life Insurance program may not be disturbed or frustrated by application of state law	11
A. State law governing marital obligations must yield to applicable federal law	13
B. The Servicemen's Group Life Insurance Act governs the distribution of the proceeds of policies issued thereunder	15
Conclusion	25

TABLE OF AUTHORITIES

Cases:

Bonner v. *United States*, 222 F. Supp. 539	19
Eldin v. *United States*, 157 F. Supp. 34	19
Free v. *Bland*, 369 U.S. 663	10, 12, 13, 14
Heifner v. *Soderstrom*, 134 F. Supp. 174	19
Herb v. *Pitcairn*, 324 U.S. 117	11
Hisquierdo v. *Hisquierdo*, 439 U.S. 572	*passim*
Lorillard v. *Pons*, 434 U.S. 575	19
Marriage of Milhan, In re, 27 Cal. 3d 765, 613 P.2d 812, 166 Cal. Rptr. 533, petition for cert. pending, No. 80-578 (filed Oct. 10, 1980)	19
McCune v. *Essig*, 199 U.S. 382	10, 12, 14
McJunkin v. *Estate of McJunkin*, 493 S.W. 2d 278	24
Ross v. *United States*, 444 F.2d 568	24
Shannon v. *United States*, 417 F.2d 256	2

Cases—Continued Page

Stratton v. *Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119 ..... 23, 24
Stribling v. *United States*, 293 F. Supp. 1293..... 24
Suydam v. *United States*, 404 F.2d 1329 ..... 19, 22
Udall v. *Tallman*, 380 U.S. 1 16
Weymann v. *Wilson*, 320 F. Supp. 980 .....22, 23, 24
Whirlpool v. *Marshall*, 445 U.S. 1 16
Will of Hilton, 88 Misc. 2d 760, 388 N.Y.S. 2d 985.. 24
Wissner v. *Wissner*, 338 U.S. 655 .....*passim*
Yiatchos v. *Yiatchos*, 376 U.S. 306 .....12, 14, 17

Constitution, statutes and regulations:

United States Constitution:

Atircle I, Section 8 10
Article VI, Clause 2 (Supremacy Clause).... 10, 13

National Service Life Insurance Act of 1940, ch. 757, Title VI, 54 Stat. 1008 *et seq.* 3

Section 602(g), 54 Stat. 1010 15

National Service Life Insurance Act of 1946, ch. 728, Section 5, 60 Stat. 782 15
National Service Life Insurance Act of 1958 ("the NSLIA"), ch. 757, Title VI, as amended, 38 U.S.C. 701 *et seq.* 3

38 U.S.C. 716(b) 15
38 U.S.C. 717(a) 15

Railroad Retirement Act, 45 U.S.C. 231 *et seq.*..... 10, 14
Servicemen's Group Life Insurance Act of 1965 ("the SGLIA"), 38 U.S.C. 765 *et seq.* .....*passim*

38 U.S.C. 765(5)(B) 4
38 U.S.C. 765(5)(C) 4
38 U.S.C. 765(7) 7, 17
38 U.S.C. 766 1
38 U.S.C. 766(a) 3
38 U.S.C. 766(b) 4
38 U.S.C. 766(c) 4
38 U.S.C. 767(a) 4, 5
38 U.S.C. 768(b) 4

Constitution, statutes and regulations—Continued Page

38 U.S.C. 769 5
38 U.S.C. 769(a)(1) 5
38 U.S.C. 769(b) 5
38 U.S.C. 769(d)(1) 5
38 U.S.C. 769(d)(2) 5
38 U.S.C. 769(d)(3) 5
48 U.S.C. 770(a) 5, 6, 7, 10, 15, 16, 17, 24
38 U.S.C. 770(d) 21
38 U.S.C. 770(g) 6, 9, 10, 12, 19, 20, 21, 25
38 U.S.C. 777 4

Veterans' Insurance Act, Pub. L. No. 93-289, 88 Stat. 165 *et seq.* 4

Section 3(5)(B), 88 Stat. 165 4
Section 5(a), 88 Stat. 166 4
Section 9(a), 88 Stat. 169 4

Pub. L. No. 89-214, 79 Stat. 880 *et seq.* 2

79 Stat. 881 4
79 Stat. 883-884 18

Pub. L. No. 91-291, 84 Stat. 326 *et seq.*:

Section 1, 84 Stat. 326 4
Section 2, 84 Stat. 327 4
Section 5, 84 Stat. 331 ..... 6, 18

Pub. L. No. 92-185, Section 1, 85 Stat. 642 17
Pub. L. No. 92-315, 86 Stat. 227 4
38 U.S.C. 210(c)(1) 6, 15
38 U.S.C. 3101 18
38 U.S.C. 3101(a) 19
42 U.S.C. (Supp. II) 659(a) 21-22
42 U.S.C. (Supp. II) 662 22
42 U.S.C. (Supp. II) 662(b) 21, 22
42 U.S.C. (Supp. II) 662(c) 22
42 U.S.C. (Supp. II) 662(f) 22
38 C.F.R.:

Section 8.0 3
Part 9 ..... 1, 10
Section 9.16(a) 6
Section 9.16(e) 6, 15
Section 9.16(f) 6, 15

Miscellaneous: Page

Annot., 13 A.L.R. Fed. 6 (1972 & 1980 Supp.) 19
111 Cong. Rec. (1965):
p. 24339 ..... 2, 3
p. 24340 23
p. 24341 16
pp. 24346-24347 3
pp. 24727-24730 3
p. 24911 3
116 Cong. Rec. (1970):
p. 18723 18
p. 18763 19
H.R. 10873, 89th Cong., 1st Sess. (1965) 3, 16
H.R. Rep. No. 1003, 89th Cong., 1st Sess. (1965) .. 2, 16
H.R. Rep. No. 91-1025, 91st Cong., 2d Sess. (1970) 18
H.R. Rep. No. 92-629, 92d Cong., 1st Sess. (1971) .. 17
S. 2127, 89th Cong., 1st Sess. (1965) 3
S. Rep. No. 619, 89th Cong., 1st Sess. (1965) 3
S. Rep. No. 91-398, 91st Cong., 1st Sess. (1969) 5
S. Rep. No. 92-545, 92d Cong., 1st Sess. (1971) 17

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INTEREST OF THE UNITED STATES

This case concerns the impact of a federal statute, the Servicemen's Group Life Insurance Act of 1965 ("the SGLIA"), 38 U.S.C. 765 *et seq.*, and regulations promulgated to implement that statute, 38 C.F.R. Part 9, upon the authority of a state court to direct disposition of the proceeds of an SGLI policy pursuant to state law. The SGLIA authorizes the Administrator of Veterans' Affairs, the head of the Veterans' Administration ("VA"), to purchase group life insurance policies insuring the lives of members of the uniformed services from qualified commercial insurers. 38 U.S.C. 766. Although the insurers chosen by the VA administer the policies they issue and

make benefit payments under them, the Administrator has ultimate responsibility for the proper implementation of the SGLIA and has promulgated regulations to that end. See *Shannon* v. *United States*, 417 F.2d 256, 259-261 (5th Cir. 1969). The Act and implementing regulations specify precisely how beneficiaries are to be designated or determined, direct payment of benefits to those beneficiaries alone, and protect payments to beneficiaries from attachment, levy, or seizure. The SGLI program is an important feature of the United States' military personnel policy, designed to render military service attractive and to maintain morale of service members. More than 3 million SGLI policies were in effect at the end of fiscal year 1979, covering service members in all 50 states. The United States accordingly has an interest in assuring that state court decrees governing the disposition of payments to policy beneficiaries do not conflict with the express terms and underlying policies of the Act.

STATEMENT

A. The Servicemen's Group Life Insurance Act

1. The Servicemen's Group Life Insurance Act was enacted in 1965, Pub. L. No. 89-214, 79 Stat. 880 *et seq.*, in order to make group life insurance coverage available to all members of the uniformed services on active duty. H.R. Rep. No. 1003, 89th Cong., 1st Sess. 7 (1965).[1] The impetus for enactment of the SGLIA was provided by the escalating level of hostilities and resulting casualties in the Vietnam conflict, which caused private commercial insurers to restrict the availability of coverage to service members. 111 Cong. Rec. 24339 (1965) (re-

[1] The Act initially provided coverage for members serving in the Army, Navy, Air Force, Marines, Coast Guard, the Commissioned Corps of the United States Public Health Service, and the Environmental Science Services Administration (subsequently redesignated the National Oceanic and Atmospheric Administration). 79 Stat. 880.

marks of Rep. Teague);[2] see also S. Rep. No. 619, 89th Cong., 1st Sess. 3 (1965).[3] An earlier program of federally sponsored life insurance for service members, the National Service Life Insurance Act of 1940 ("the NSLIA"), ch. 757, Title VI, 54 Stat. 1008 *et seq.* and the NSLIA of 1958, as amended, 38 U.S.C. 701 *et seq.*, adopted in light of the approach of World War II, had been allowed to lapse after the end of the Korean hostilities, as commercial insurance again became available to service members. Accordingly, NSLI coverage was not generally available to service members on active duty in 1965 who had not been previously covered. See 38 C.F.R. 8.0; 111 Cong. Rec. 24339 (1965) (remarks of Rep. Teague).

Although its purposes and provisions resemble those of the NSLIA in many respects,[4] the SGLIA differs from the earlier statute in that it directs the Administrator of Veterans' Affairs to purchase coverage from one or more commercial insurers satisfying criteria prescribed by Congress, rather than offering coverage by the United States as insurer. 38 U.S.C. 766(a).[5] Accordingly, the

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[2] Representative Teague, Chairman of the Committee on Veterans' Affairs, directed his comments to H.R. 10873, 89th Cong., 1st Sess. (1965). The text of the House bill was ultimately substituted for the original text of a counterpart Senate bill, S. 2127, 89th Cong., 1st Sess. (1965), and was adopted without material change as S. 2127. See 111 Cong. Rec. 24334-24336, 24346-24347, 24727-24730, 24911 (1965).

[3] S. Rep. No. 619 accompanied the Senate bill, S. 2127, which (as initially passed by the Senate) provided for a program of noncontributory indemnities for families of service members killed in combat. While the Senate ultimately adopted the broader insurance program adopted by the House, see note 2, *supra*, the problems addressed by the two proposals overlapped substantially.

[4] The NSLI program was before this Court in *Wissner* v. *Wissner*, 338 U.S. 655 (1950).

[5] Each primary insurer must, *inter alia*, be licensed to sell life insurance in each of the 50 states and the District of Columbia. 38 U.S.C. 766(a). The designated primary insurer or insurers

government is the policyholder, rather than the insurer, under the SGLI program. The Administrator has contracted with the Prudential Insurance Company of America, which serves as the primary insurer under the SGLIA, and which operates, under VA supervision, the Office of Servicemen's Group Life Insurance, located in Newark, New Jersey. See 38 U.S.C. 766(b).

Maximum coverage under the SGLI program was initially set at $10,000. 79 Stat. 881. Since the inception of the program, however, statutory changes have expanded the class of people eligible for SGLI coverage and the amount of coverage available. In 1970, the maximum amount of coverage was increased from $10,000 to $15,000 and part-time coverage was extended to all reservists, to members of the National Guard and to ROTC members while engaged in authorized training duty. Pub. L. No. 91-291, Sections 1 and 2, 84 Stat. 326-327. In 1972, cadets and midshipmen of the service academies were included for full-time coverage. Pub. L. No. 92-315, 86 Stat. 227. In 1974, the Veterans' Insurance Act, Pub. L. No. 93-289, 88 Stat. 165 *et seq.*, increased maximum coverage to $20,000 for all members (38 U.S.C. 767(a)) and extended full-time coverage to members of the Ready Reserves and Retired Reservists (38 U.S.C. 765(5)(B) and (C)). The 1974 Veterans' Insurance Act also established the Veterans' Group Life Insurance (VGLI) program in order to provide recently discharged service members the right to convert SGLI policies to a nonrenewable five-year term policy. Sections 5(a) and 9(a), 88 Stat. 166, 169. See 38 U.S.C. 768(b) and 777.

To ensure that the right to obtain insurance is not forfeited by oversight, the SGLI program is operated on a presumptive enrollment basis. That is, coverage is provided and premiums are withheld from servicemen's pay, unless and until coverage is expressly declined or termi-

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share the actuarial risk by reinsuring portions of the total liability with other participating insurers who meet criteria specified by the Administrator. 38 U.S.C. 766(c); see 38 C.F.R. 9.28.

nated in writing. 38 U.S.C. 767(a) and 769. The Veterans' Administration informs us that 99.6% of all active duty personnel and 97.9% of the Ready Reservists are enrolled in the program. In order to make life insurance available to service members through a commercial insurer at reasonable rates, notwithstanding the special mortality risks that service members often assume, Congress undertook to subsidize the premiums. A sum representing the extra premium for the special mortality risk incurred by service members is periodically deposited by the United States into a revolving fund established to pay the premiums on the master SGLI policy from appropriations for service pay. 38 U.S.C. 769(b) and (d)(1). The balance of the revolving fund is derived from deductions withheld from service members' pay. 38 U.S.C. 769(a)(1) and (d)(1).[6] Accordingly, depending upon the conditions faced by service members at any given point in time, a large share of the premiums paid may be derived from the federal budget, rather than service members' contributions. See, *e.g.*, S. Rep. No. 91-398, 91st Cong., 1st Sess. 2 (1969).

2. The SGLIA provides that insurance benefits under an SGLI policy "shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of * * * [the service member's] death" in a specified "order of precedence." 38 U.S.C. 770(a). Benefits are to be paid first "to * * * [such] beneficiary or beneficiaries as the member or former member may have designated by a writing" received at the appropriate office prior to the member's death. If the service member has not made a written designation, the benefits are to be paid to the member's "widow or widower"; if there are no beneficiaries under the first two categories the benefits are to be paid to the member's child or children. *Ibid.*

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[6] The Administrator is also authorized to draw upon the revolving fund to pay the administrative costs incurred by the VA in overseeing administration of the SGLIA. 38 U.S.C. 769(d)(2) and (3).

Proceeds payable to a beneficiary under 38 U.S.C. 770(a)] are expressly shielded from any type of judicial process. Pursuant to 38 U.S.C. 770(g), added to the SGLIA in 1970, Pub. L. No. 91-291, Section 5, 84 Stat. 331, payments of policy proceeds "shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure *by or under any legal or equitable process whatever*, either before *or after* receipt by the beneficiary" (emphasis added). Thus, by this statutory scheme, Congress has elected to honor any choice of beneficiary made by a service member by exercise of the proper procedures, and to secure to the beneficiary so designated, or determined under the statutory order of precedence, the exclusive right of enjoyment of the proceeds of a matured SGLI policy.

The VA has consistently construed the SGLI statute as mandating payment of policy proceeds to the beneficiary selected by the insured and properly registered under applicable procedures, notwithstanding any contrary terms of divorce settlements, decrees, or other documents. Thus, pursuant to his authority under 38 U.S.C. 210(c)(1) to "make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration and are consistent therewith," the Administrator has promulgated regulations providing, *inter alia*, that a "member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary," 38 C.F.R. 9.16(a), that "[a] change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary," 38 C.F.R. 9.16(e), and that "[n]o change or cancellation of beneficiary * * * in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office * * *." 38 C.F.R. 9.16(f).

B. The Present Proceedings

1. Richard Ridgway, a Sergeant in the United States Army, was the insured under a $20,000 SGLI policy issued by petitioner Prudential Insurance Company. Sgt. Ridgway's first marriage, to respondent April Ridgway, ended in divorce in December 1977. The divorce decree, which was entered following property settlement negotiations between Sgt. Ridgway and his wife,[7] ordered him "to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children" and to replace the policies with other insurance should any of them "be terminated for any reason" (Pet. App. 16, 28-29).[8]

In 1978, Ridgway married his second wife, petitioner Donna Ridgway. On April 3, 1978, contrary to the divorce decree, Sgt. Ridgway altered the designation of beneficiary governing his SGLI policy, directing that the proceeds be paid as specified "by law." This meant that the statutory order of precedence in 38 U.S.C. 770(a) was to be followed; under that provision, the policy proceeds would be paid to Sgt. Ridgway's widow, Donna Ridgway (Pet. App. 28).[9]

2. Following Sgt. Ridgway's death in 1979, both April and Donna Ridgway filed claims with Prudential for the proceeds of the SGLI policy. April Ridgway predicated

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[7] It is not entirely clear from the opinions of the Maine courts whether the property division negotiations culminated in an agreement, and if so, whether it was in written form, and whether any such agreement required Sgt. Ridgway to maintain his SGLI policy in effect for the benefit of his children (compare Pet. App. 16 and 32 with Pet. App. 28). For purposes of this brief we assume, as did the Supreme Judicial Court (*id.* at 16), that a separation agreement to this effect existed.

[8] Respondents Hayley, Laurie and Brady Ridgway are the children of April and Richard Ridgway.

[9] The SGLIA defines a widow for the purpose of 38 U.S.C. 770(a) to be "a person who is the lawful spouse of the insured member at the time of his death." 38 U.S.C. 765(7).

her claim on the divorce decree; Donna Ridgway claimed the proceeds on the basis of Sgt. Ridgway's policy designation and her status as his widow (Pet. App. 28). April Ridgway thereafter filed suit on behalf of her children against Prudential, in the Superior Court for Androscoggin County, Maine, seeking an injunction barring Prudential from paying the SGLI insurance proceeds to Donna Ridgway and a declaratory judgment that the proceeds belonged to her children. Donna Ridgway was joined as a party to the suit and was aligned as a plaintiff, asserting her claim to the insurance proceeds. April Ridgway then amended her complaint to designate her children as plaintiffs and herself as their legal representative. Finally, April Ridgway filed a cross-claim against Donna Ridgway, seeking imposition of a constructive trust on any SGLI insurance proceeds paid over to Donna Ridgway for the benefit of the children of April and Richard Ridgway (Pet. App. 17, 28-29).

The Superior Court rejected April Ridgway's claims, agreeing with Donna Ridgway and Prudential that the terms of the divorce decree directing Sgt. Ridgway to maintain his children as the beneficiaries designated to receive the SGLI insurance proceeds were inconsistent with the SGLIA and the VA regulations thereunder, which afford a policy holder complete freedom of choice in the designation or substitution of a beneficiary (Pet. App. 30-31). The court further held that imposition of a constructive trust upon the insurance proceeds once they reached the hands of the designated beneficiary would be equally impermissible under federal law (*id.* at 31-32). While denying all relief to April Ridgway in those proceedings and directing payment of the insurance benefits to Donna Ridgway, the Superior Court suggested that April Ridgway might have a separate viable cause of action for breach of contract against Sgt. Ridgway's estate, resting upon the property settlement agreement that underlay the divorce decree (*id.* at 32).

3. The Supreme Judicial Court of Maine reversed (Pet. App. 16-25), reaching only the propriety of imposing the constructive trust sought by April Ridgway (*id.* at 18). Based upon a single item in the legislative history of the SGLIA as originally enacted in 1965,[10] the court concluded (*id.* at 20-21) that the Act's sole objectives were:

> first, to make available to servicemen serving in a combat zone life insurance at standard rates and without war exclusion clauses; second, to make survivorship benefits available to non-dependent parents of deceased servicemen without the necessity that the parents meet a "needs" test; and third, to permit servicemen to provide survivorship protection for individuals such as brothers and sisters without any showing of dependency.

In the court's view (*id.* at 21), none of these objectives would be frustrated by the imposition of a constructive trust.

The Supreme Judicial Court also concluded the the anti-attachment provision of the SGLIA, 38 U.S.C. 770(g), was no obstacle to the imposition of a constructive trust upon the insurance proceeds. The court stated (Pet. App. 21) that the purpose of that provision "is to protect the proceeds of the insurance from the claims of creditors," adding that "[w]e are concerned here not with the claim of a creditor but with the claims of minor children who assert an equitable interest in the proceeds * * *." The court distinguished (*id.* at 21-24) this Court's decision in *Wissner* v. *Wissner*, 338 U.S. 655 (1950), proscribing application of state community property law to proceeds of a NSLI policy, by relying upon a suggestion in *Wissner* (338 U.S. at 659-660 & n.4) that cases involving alimony or support obligations might require a different result. Stressing that Sgt. Ridgway voluntarily assumed the obligation to designate his children as the benefici-

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[10] See note 14, *infra*.

aries of his SGLI policy, and that he violated the "valid decree[]" of a state court (Pet. App. 24), the Supreme Judicial Court concluded that Congress had not barred imposition of a constructive trust as a remedy in these circumstances, and it imposed such a trust in favor of the respondents.

SUMMARY OF ARGUMENT

There can be no dispute as to the power of Congress, acting under Article I, Section 8, of the Constitution, to legislate on the subject of insurance for members of the military and other uniformed services and to prescribe the terms upon which the proceeds of such insurance will be paid. Similarly, there can be no doubt that when Congress speaks in this area its mandate displaces any inconsistent provisions of state law, by operation of the Supremacy Clause (Article VI, cl. 2). Pursuant to this charter for federal supremacy, this Court has removed impediments to the exercise of rights and expectancies created under federal law governing Railroad Retirement Act pensions, *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979); United States Savings Bonds, *Free* v. *Bland*, 369 U.S. 663 (1962); homesteads on the public lands, *McCune* v. *Essig*, 199 U.S. 382 (1905); and military life insurance, *Wissner* v. *Wissner*, 338 U.S. 655 (1950). We rely on these cases for our submission that the decision below should be reversed.

The SGLIA and implementing regulations afford a service member complete freedom of choice in the designation of a beneficiary. 38 U.S.C. 770(a); 38 C.F.R. Part 9. Congress determined to accord this discretion deliberately. Congress further assured that the service member's wishes would be honored by barring assignment of any interest in the insurance proceeds, and by securing these proceeds, both before or after payment to the beneficiary, against assertion of any legal or equitable rights conflicting with that of the beneficiary. 38 U.S.C. 770(g). These provisions closely parallel pro-

visions of the NSLIA that, the Court held in *Wissner*, preclude diversion of NSLI proceeds. The decision of the Maine Supreme Judicial Court frustrates the will of Congress by depriving Sgt. Ridgway's widow and designated beneficiary, Donna Ridgway, of the beneficial enjoyment of the proceeds of his SGLI policy.

Contrary to the suggestions of the Maine court and respondents, the decision below cannot be harmonized with prior law. Even if an exception to the anti-assignment provision were to be recognized in cases of child support, the interest secured to respondents by the lower court would not fall within that exception. Moreover, the use of a constructive trust device does not avoid the congressional policy precluding interference with the designated beneficiary's enjoyment of the insurance proceeds. Finally, Sgt. Ridgway's apparent agreement to maintain his children as beneficiaries of his insurance does not control the result in this case. The SGLIA prescribes the exclusive means of designating or changing a beneficiary, and state law is not competent to lend effective validity to an instrument that does not comply with the terms of the federal statute and implementing regulations.

ARGUMENT

A VALID DESIGNATION OF A BENEFICIARY UNDER THE SERVICEMEN'S GROUP LIFE INSURANCE PROGRAM MAY NOT BE DISTURBED OR FRUSTRATED BY APPLICATION OF STATE LAW

This Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." *Herb* v. *Pitcairn*, 324 U.S. 117, 125-126 (1945). Accordingly, the decision of the Supreme Judicial Court of Maine is open to review only to the extent that it fails to honor rights and duties established by federal law. However, notwithstanding the limited purview of federal law in the field of domestic relations generally, see *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 581

(1979), this Court has previously found it necessary to protect rights and expectancies established pursuant to federal law against the operation of state law governing the marital relation, to prevent the frustration of the congressional policy embodied in the federal rights. See *Hisquierdo* v. *Hisquierdo, supra,* 439 U.S. at 581-582; *Yiatchos* v. *Yiatchos,* 376 U.S. 306, 309 (1964); *Free* v. *Bland,* 369 U.S. 663 (1962); *Wissner* v. *Wissner,* 338 U.S. 655 (1950); *McCune* v. *Essig,* 199 U.S. 382 (1905). This case requires the Court to honor rights created by the Servicemen's Group Life Insurance Act.

Petitioners argue that a service member is entitled under the SGLIA and implementing regulations to designate whomever he wishes as beneficiary of the policy insuring his life, and that the service member is further entitled to expect that the designated beneficiary alone will receive the beneficial enjoyment of the proceeds of the policy. The Supreme Judicial Court of Maine concluded, however, that imposition of a constructive trust on the proceeds of an SGLI policy to enforce a state divorce decree would not interfere with federal policy. In the view of the Maine court, no federal policy requires "permitting a serviceman to evade the responsibility to provide for his minor children" (Pet. App. 21). Moreover, the court determined that the anti-attachment provision of the SGLIA, 38 U.S.C. 770(g), merely serves "to protect the proceeds of the insurance from the claims of creditors" (Pet. App. 21) and that the provision presents no barrier to "the claims of minor children who assert an equitable interest in the proceeds" of an SGLI policy (*ibid.*). We believe that the Maine court's conclusions are mistaken, because they fail to give effect to the literal commands of the SGLIA or to the congressional policy embodied therein.

A. State Law Governing Marital Obligations Must Yield To Applicable Federal Law

State divorce decrees, like other law governing the economic aspects of domestic relations, must give way to conflicting federal law, notwithstanding the importance to the state of the policies embodied in its own law. *Hisquierdo* v. *Hisquierdo, supra,* 439 U.S. at 581; *Free* v. *Bland, supra,* 369 U.S. at 666. That principle, which governs this case, is but the necessary consequence of the Supremacy Clause of the Constitution, Article VI, cl. 2. *Ibid.*

The application of federal law to displace inconsistent state domestic law is best illustrated in a line of cases in which federally created benefits and property rights were shielded from application of state community property law. In *Wissner* v. *Wissner, supra,* for example, an Army officer named his parents as beneficiaries of a National Service Life Insurance policy. Upon the serviceman's death, however, his widow sought to exercise community property rights in the insurance proceeds. The NSLIA provided that the insured "shall have the right to designate the beneficiary or beneficiaries of the insurance * * * and shall * * * at all times have the right to change the beneficiary or beneficiaries * * *." 338 U.S. at 658. The Act further provided that payments to the beneficiary would be "exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." *Id.* at 659. Despite these provisions, a California court held that the proceeds of the policy were community property and ordered that one-half of the proceeds be paid to the widow by the named beneficiaries. *Id.* at 658.

This Court reversed, noting that "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." 338 U.S. at 658. The Court added that "[w]hether directed at the very money received from the Government or an equiva-

lent amount, the judgment below nullifies the soldier's choice and frustrates the deliberate purpose of Congress." *Id.* at 659. The diversion of future payments to be received by the beneficiary directed by the state court was proscribed as a "seizure" prohibited by the anti-attachment provision of the Act. *Ibid.*

This mode of analysis is traceable at least to *McCune* v. *Essig*, *supra*, in which federal homestead laws providing a right of succession to a widow were held to bar acquisition of any interest in the homesteaded lands by a deceased homesteader's daughter. The Court recognized that this result was contrary to that dictated by state community property law, but stated: "The law of the State is not competent to do this." 199 U.S. at 389. The Court employed a similar analysis in *Free* v. *Bland*, *supra*, overturning a decision by the Supreme Court of Texas holding that Texas community property law took precedence over Treasury Department regulations creating a right of survivorship in United States Savings Bonds. 369 U.S. at 664-666. This Court observed that "[t]he clear purpose of the regulations is to confer the right of survivorship on the surviving co-owner. Thus, the survivorship provision is a federal law which must prevail if it conflicts with state law" (*id.* at 668; footnote omitted). See also *Yiatchos* v. *Yiatchos*, *supra*. Most recently, in *Hisquierdo* v. *Hisquierdo*, *supra*, the Court held that provisions of the Railroad Retirement Act, 45 U.S.C. 231 *et seq.*, that bar assignment or diversion of any interest therein by legal process, and terminate a spouse's eligibility for benefits upon divorce, preclude application of community property law to benefits paid under the Act.

In light of these precedents, the critical inquiry in this case is readily identified: Whether the diversion of the beneficial interest in the proceeds of Sgt. Ridgway's SGLI policy from his designated beneficiary, Donna Ridgway, to the use of his children conflicts with the provisions of the SGLIA and valid implementing regulations.

B. The Servicemen's Group Life Insurance Act Governs The Distribution Of The Proceeds Of Policies Issued Thereunder

1. The disposition in this case is controlled by *Wissner* v. *Wissner*, *supra*. Under the SGLIA, 38 U.S.C. 770(a), as under the earlier NSLIA, Section 602(g), 54 Stat. 1010, considered in *Wissner*, the insured service member possesses the right freely to designate his beneficiary and to alter his choice at any time by communicating that decision in writing to the proper office. See 338 U.S. at 658.[11] Thus, as under the NSLIA, "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." *Ibid.*[12] Nor

[11] Under the NSLIA, as originally adopted (Section 602(g), 54 Stat. 1010), the choice of beneficiary was generally limited to a class consisting of the decedent's spouse, children, parents and siblings. See 38 U.S.C. 716(b). Congress removed this restriction as to NSLI policies maturing after August 1, 1946. NSLIA of 1946, ch. 728, Section 5, 60 Stat. 782; see 38 U.S.C. 717(a). In *Wissner*, the Court considered the NSLIA as it stood prior to the 1946 amendments. 338 U.S. at 656 n.1, 658. The SGLIA follows the post-1946 NSLIA in allowing complete freedom-of-choice to the service member in designating his or her beneficiary. The congressional policy of honoring a service member's choice recognized in *Wissner* was thus enlarged and emphasized by the 1946 NSLIA amendments and the corresponding provision of the SGLIA, 38 U.S.C. 770(a).

[12] To be sure, the SGLIA differs from the NSLIA in that the latter expressly states that the right to designate a beneficiary is retained "at all times" and does not rest on the consent of the beneficiary. See Section 602(g), 54 Stat. 1010; 38 U.S.C. 717(a). But the SGLIA's unqualified directive to pay all proceeds to whatever "beneficiary or beneficiaries * * * the member * * * may have designated by a writing received [in the proper office] prior to death" (38 U.S.C. 770(a)), suggests that no different result was intended by Congress. Any ambiguity was eliminated by the regulations promulgated by the Administrator, pursuant to 38 U.S.C. 210(c)(1), providing that a "change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary" (38 C.F.R. 9.16(e)), and that "[n]o change or cancellation of beneficiary * * * in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office" (38 C.F.R. 9.16(f)). Neither respondents nor the court below have ever suggested that these

can there be any doubt that Congress recognized the breadth of the freedom of choice accorded to the service member under the SGLIA. The House Report states: "The serviceman may designate any person as a beneficiary." H.R. Rep. No. 1003, 89th Cong., 1st Sess. 7 (1965). This point was underscored during the legislative debate:

> This bill permits you to leave your insurance to your church, to your college, to your best friend. The beneficiary provision is wide open under this option.

111 Cong. Rec. 24341 (1965) (remarks of Rep. Everett).[13] The Maine court's cramped construction of the purposes of the SGLIA (Pet. App. 20-21) is accordingly inconsistent with both the language of the Act and its legislative history.[14]

Neither respondents nor the Maine Supreme Judicial Court have questioned Congress' authority to control pay-

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regulations are unreasonable, unauthorized or inconsistent with the SGLIA, nor would such a suggestion be supportable. See *Whirlpool Corp.* v. *Marshall*, 445 U.S. 1, 11-13 (1980); *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965).

[13] See note 11, *supra*. These remarks and the report cited addressed the House bill, H.R. 10873, 89th Cong., 1st Sess. (1965), which formed the basis for the SGLIA as enacted. See note 2, *supra*.

[14] In interpreting the purpose of the SGLIA, the Supreme Judicial Court relied (Pet. App. 20-21) entirely upon a statement by W. J. Driver, then Administrator of Veterans' Affairs, appended to H.R. Rep. No. 1003, *supra*, at 15-17. The statement cited, however, does not purport to comment specifically on the purpose of the freedom-of-choice-of-beneficiary provision, 38 U.S.C. 770(a). Plainly, it cannot be employed to read that provision out of the Act, as the Maine court did. This statement is, in any event, not a product of Congress itself. The language paraphrased by the Maine court is an especially poor indicator of congressional intent regarding Section 770(a), because rather than describing the provisions of the bill that became the SGLIA, it merely identifies some of the problems in the existing law addressed by both the House bill, H.R. 10873, *supra*, which became the SGLIA, and the far more limited Senate bill, S. 2127, *supra*, which contained no provision comparable to 38 U.S.C. 770(a). H.R. Rep. No. 1003, *supra*, at 16; see note 2, *supra*.

ment of the proceeds of SGLI policies. As the Court acknowledged in *Wissner* v. *Wissner*, *supra*, 338 U.S. at 660-661, this "end is a legitimate one within the congressional powers over national defense, and the means are adapted to the chosen end." The federal interest in controlling disposition of the entitlement created by the SGLIA is especially strong because a large share of the proceeds of an SGLI policy may be drawn from general tax revenues. See page 5, *supra;* compare *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 582; *Wissner* v. *Wissner*, 338 U.S. at 658.[15] The controlling provisions of the SGLIA accordingly must displace the inconsistent provisions of state law.[16]

2. a. Imposition of a constructive trust upon the insurance proceeds is also inconsistent with the anti-

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[15] The balance of the funds that support payment of benefits under a matured policy are deducted from a service member's pay. See page 5, *supra*. There is thus no opportunity for fraudulent manipulation of assets owned by a spouse to finance insurance premiums. Compare *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 582, with *Yiatchos* v. *Yiatchos*, *supra*, 376 U.S. at 309-310.

[16] In *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 590 n.24, the Court suggested that state law might not be so readily displaced where Congress is silent on the subject of distribution of a benefit, especially when the benefit program is a private one that federal law merely regulates. That caveat has no application here. The entire SGLI benefit program is a creation of Congress, and the United States is the insured thereunder. Congress and the Administrator have answered all relevant questions as to entitlement to benefits by defining the order of precedence. 38 U.S.C. 770(a). Congress also defined the term "widow" in the 1971 amendments to the SGLIA, Pub. L. No. 92-185, Section 1, 85 Stat. 642, 38 U.S.C. 765(7), as "a person who is the lawful spouse of the insured member at the time of his death," thereby removing any ground for questioning Donna Ridgway's right to receive the proceeds of Sgt. Ridgway's insurance under 38 U.S.C. 770(a). See page 7, *supra*. The 1971 amendment to the SGLIA was intended to ensure use of uniform federal definitions of the terms employed in the statutory order of precedence governing payment of SGLI proceeds. H.R. Rep. No. 92-629, 92d Cong., 1st Sess. 1-2 (1971); S. Rep. No. 92-545, 92d Cong., 1st Sess. 1-2 (1971)

attachment provision of the SGLIA, 38 U.S.C. 770(g). This Court invoked the anti-attachment provision of the NSLIA as an independent ground for the result in *Wissner* v. *Wissner, supra,* 338 U.S. at 659. The SGLIA provides, in language identical to that construed in *Wissner,* that payments to a beneficiary designated by the insured or determined by law

> shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

38 U.S.C. 770(g). The diversion of the equitable interest in the proceeds of Sgt. Ridgway's SGLI policy by means of the constructive trust fashioned by the Maine court is effectively a seizure of those proceeds, which Congress intended to prevent. *Wissner* v. *Wissner, supra,* 338 U.S. at 659.

When originally adopted, the SGLIA did not include a separate anti-attachment provision. See 79 Stat. 883-884. This provision was added by amendment in 1970. 84 Stat. 331. The amendment, proposed by the Veterans' Administration, was intended to still doubts as to whether the general anti-assignment provision covering VA benefits programs, 38 U.S.C. 3101, was applicable to the SGLI program. H.R. Rep. No. 91-1025, 91st Cong., 2d Sess. 17-18 (1970) (letter from Administrator of Veterans' Affairs).[17] The amendment was described in the House Report as identical to the anti-attachment provision applicable to NSLI. *Id.* at 5. Similarly, Senator Talmadge, the sponsor of the Senate version of the amendment, remarked: "The provision * * * closely parallels another provision of present law relating to National Servicemen's Life Insurance proceeds." 116

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[17] The present 38 U.S.C. 3101, which covers the NSLI program, was before the Court in *Wissner.* 338 U.S. at 659. However, unlike the NSLI program, payments are not made directly by the VA under the SGLI program. Accordingly, the applicability of the general anti-assignment provision was open to question. See H.R. Rep. No. 91-1025, *supra,* at 5, 17, 18; 116 Cong. Rec. 18723 (1970) (remarks of Sen. Talmadge).

Cong. Rec. 18723 (1970). The amendment to the SGLIA was enacted after this Court's *Wissner* decision. In these circumstances, it is reasonable to assume that Congress intended 38 U.S.C. 770(g) to be interpreted in the same fashion as its counterpart in the NSLIA. See *Lorillard* v. *Pons*, 434 U.S. 575, 580-581 (1978). Like the earlier provision, Section 770(g) gives effect to Congress' intention that the beneficiary identified pursuant to the SGLIA and the applicable regulations not be disturbed in his enjoyment of the policy proceeds.[18]

The Maine court attempted to limit the reach of Section 770(g), stating (Pet. App. 21) that "its purpose is to protect the proceeds of the insurance from the claims

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[18] The VA had always construed the anti-attachment provision of 38 U.S.C. 3101(a) and its forerunner as barring any claims against proceeds that would be inconsistent with the serviceman's designation of beneficiary, notwithstanding any contrary divorce decree or property settlement, and most decided cases under the NSLIA followed that rule. See, *e.g.*, *Bonner* v. *United States*, 222 F. Supp. 539 (D. Mass. 1963); *Eldin* v. *United States*, 157 F. Supp. 34 (S.D. Ill. 1957); *Heifner* v. *Soderstrom*, 134 F. Supp. 174 (N.D. Iowa 1955); Annot., 13 A.L.R. Fed. 6, 26 *et seq.* (1972 & 1980 Supp.) (collecting cases). In *Suydam* v. *United States*, 404 F.2d 1329 (D.C. Cir. 1968), the court of appeals agreed that the terms of a divorce decree could not overcome a valid designation of beneficiary under the NSLIA. The court suggested in dictum, however, that a constructive trust might be imposed upon the proceeds of the policy in the hands of the designated beneficiary, where a divorce decree incorporates a valid property settlement agreement purporting to freeze the designation of beneficiary under an NSLI policy. 404 F.2d at 1332. The court made no attempt to distinguish the authorities cited above and this Court's *Wissner* decision, which were cited by the court (*id.* at 1331) in rejecting the direct attack on the designation of beneficiary.

In *In re Marriage of Milhan*, 27 Cal. 3d 765, 777-778, 613 P.2d 812, 818-819, 166 Cal. Rptr. 533, 539-540 (1980), petition for cert. pending, No. 80-578 (filed Oct. 10, 1980), the California Supreme Court held, *inter alia*, that neither *Wissner* nor *Hisquierdo* bars an award to a spouse in divorce proceedings of property equivalent in amount to a community property share of the present value of a living veteran's NSLI policy. For the reasons stated in this brief we believe that the *Milhan* decision is unsound.

of creditors" and that it accordingly has no application to "the claims of minor children who assert an equitable interest." But this contention fails to give effect to the broad and unqualified sweep of Section 770(g), which, in addition to exempting policy proceeds from the claims of creditors, prohibits any "attachment, levy, or seizure," by or under "any legal or equitable process whatever," and whether accomplished "before or after receipt" of the insurance proceeds by the beneficiary. Under the reading adopted by the Maine court, the bulk of the statutory text is mere surplusage. Moreover, the Maine court resurrected an argument rejected by this Court in *Wissner* (compare 338 U.S. at 659 (opinion of the Court) with 338 U.S. at 662-664 (Minton, J., dissenting)) and more recently in *Hisquierdo* v. *Hisquierdo*, *supra* (compare 439 U.S. at 583-587 (opinion of the Court) with 439 U.S. at 598-600 (Stewart, J., dissenting)). The *Hisquierdo* Court declared without qualification (439 U.S. at 584; footnote omitted):

> Like anti-attachment provisions generally, see *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973); *Wissner* v. *Wissner*, *supra*, * * * [the Railroad Retirement Act] ensures that the benefits actually reach the beneficiary. It pre-empts all state law that stands in its way. It protects the benefits from legal process "[n]otwithstanding any other law . . . of any State." * * * It prevents the vagaries of state law from disrupting the national scheme, and guarantees a national uniformity that enhances the effectiveness of congressional policy.

b. The Maine court sought to distinguish *Wissner* by relying on language in the Court's opinion which it read to suggest that "a different result might obtain in cases involving alimony and/or support" (Pet. App. 22). But the Court in *Wissner* declined to express any view upon the merits of such a distinction. 338 U.S. at 660. In any event, even if an exception to the absolute statutory ban on diversion of benefits should be intro-

duced into the SGLIA in some class of cases involving alimony or support, this is not such a case, for the provisions of the Ridgway divorce decree directing Sgt. Ridgway to maintain his insurance in effect for the benefit of his children cannot be so characterized as a matter of federal law. These provisions of the divorce decree were not based on any finding of need for the insurance proceeds. Compare *Wissner* v. *Wissner*, *supra*, 338 U.S. at 660; *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 587 & n.20. Indeed, here the divorce decree was apparently based upon the terms of a property division agreement. But see note 7, *supra*. Moreover, the beneficiary of an SGLI policy has only a contingent right to receive a lump sum payment at an uncertain future date.[19] Sgt. Ridgway's obligation to maintain his SGLI insurance is to be contrasted in this respect with other obligations imposed upon him by the Ridgway divorce decree, including monthly support payments for each child, a quarterly clothing allowance, and provision for the cost of medical, dental and optical health care (J.A. 14). The insurance term of the divorce decree accordingly cannot fairly be described as entailing child support. Compare 42 U.S.C. (Supp. II) 622(b).[20]

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[19] Under the SGLIA, the insured service member may direct settlement in a lump sum or payment of proceeds in 36 monthly installments. If he or she elects the former, the beneficiary may override that choice upon maturation of the policy, in favor of the latter option. 38 U.S.C. 770(d).

[20] The cited definition of "child support" occurs in an amendment to the Social Security Act. It is applicable to a limited waiver of the anti-garnishment provisions that would otherwise apply, *inter alia*, to federal wages, Social Security and Railroad Retirement Act benefits. The amendment permits enforcement of alimony and child support obligations against such wages or benefits due from the United States to the person bound to pay such support. See 42 U.S.C. (Supp. II) 659(a). This provision applies only to "moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, sub-

3. The Maine court (Pet. App. 24) and respondent (Br. in Op. 3, 6) suggest that imposition of a constructive trust upon the insurance proceeds for the benefit of Sgt. Ridgway's children avoids any conflict with the terms and policies of the SGLIA, at least in circumstances where the service member entered a "voluntary agreement" to maintain his child as beneficiary. We disagree.[21] First, as demonstrated above (see pages 17-20, *supra*), the anti-attachment provisions of the SGLIA bar *any* form of diversion of the right to enjoy the insurance proceeds. Diversion by legal process is expressly barred both before and after receipt by the beneficiary. 38 U.S.C. 770(g). Second, reliance upon the constructive trust device rather than direct relief against the insurer would heighten the burden placed upon the designated

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division or instrumentality thereof)." *Ibid.* It is accordingly inapplicable to SGLI proceeds, which are not "based upon remuneration for employment," see 42 U.S.C. (Supp. II) 662(f), and which are the obligations of a private insurer to the United States, rather than obligations of the United States. See pages 3-4, *supra*.

In *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 587 & n.20, the Court noted that in the 1977 amendments to the Social Security Act, 42 U.S.C. (Supp. II) 659(a), 662, Congress had "written into law the same distinction *Wissner* drew as a matter of policy." The Court observed that Congress had defined alimony, 42 U.S.C. (Supp. II) 662(c), so as to exclude property divisions and community property distributions, inferring that Congress did not intend to allow Railroad Retirement Act benefits to be reached by assertion of community property rights. The definition of "child support" in the Social Security Act amendments, as "periodic payment of funds for the support and maintenance of a child," 42 U.S.C. (Supp. II) 662(b), is similarly instructive here. The Maine divorce court's direction that Sgt. Ridgway maintain his life insurance for the benefit of his children simply is not recognizable as child support within the meaning of this cognate authority.

[21] The only other court to consider the imposition of a constructive trust on SGLI proceeds refused such relief. *Weymann* v. *Wilson*, 320 F. Supp. 980, 989 (M.D. Fla. 1970). But cf. *Suydam* v. *United States*, *supra*, 404 F.2d at 1332 (dictum concerning NSLIA; see note 18, *supra*).

beneficiary to defend his or her right to receive the insurance proceeds, contrary to the policy of the SGLIA.[22] The legislative history of the SGLIA reveals that Congress believed that providing a secure financial resource to those dependent upon a service member was a benefit of great importance to those obliged to serve in combat. 111 Cong. Rec. 24340 (1965) (remarks of Reps. Ellsworth and Shriver). As explained earlier, service members were deliberately given unlimited freedom to designate their beneficiaries. It would hardly comport with these congressional choices to open the door to litigation against the designated beneficiary. *Wissner* v. *Wissner*, *supra*, 338 U.S. at 660.

Nor can the imposition of a constructive trust be rationalized on the ground that the decedent agreed to maintain his children as his beneficiary. *Stratton* v. *Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119, 1121 (S.D. Iowa 1976); *Weymann* v. *Wilson*, 320 F. Supp. 980, 989 (M.D. Fla. 1970); see also note 18, *supra*. The SGLIA and implementing regulations give service members the right to change their minds, from time to time, as to who should receive insurance pro-

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[22] Respondents seemingly concede (Br. in Op. 2, 8), as did the Maine court (Pet. App. 24), that direct relief against the insurer is barred by the SGLIA. The few reported cases in point are in accord with this concession. See *Stratton* v. *Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119 (S.D. Iowa 1976); cf. *Weymann* v. *Wilson*, *supra*. Respondents' concession, and their statement that

> [n]either respondents nor the Maine Supreme Court have suggested that Prudential could not safely pay the beneficiary designated by the deceased serviceman as indicated by the forms in its possession and thus fully discharge its liability under the policy

(Br. in Op. 8) is difficult to square with the fact that this action was commenced by respondents against Prudential as the sole defendant, to restrain payment by Prudential to petitioner Donna Ridgway.

ceeds.[23] The Maine court effectively frustrated Sgt. Ridgway's exercise of that right. Moreover, the SGLIA stipulates the proper procedure for changing a designation of beneficiary. 38 U.S.C. 770(a). A valid designation must be written, and must be received by the service in which a decedent served, prior to death. *Ibid.*; *Ross* v. *United States*, 444 F.2d 568, 572 (Ct. Cl. 1971); *Stratton* v. *Servicemen's Group Life Insurance Co.*, *supra*, 422 F. Supp at 1121-1122; *Weymann* v. *Wilson*, *supra*, 320 F. Supp. at 987-989; *Stribling* v. *United States*, 293 F. Supp. 1293, 1298-1300 (E.D. Ark. 1968). These conditions were not fulfilled by the divorce decree entered against Sgt. Ridgway or by any separation agreement he may have signed. Imposition of a constructive trust is thus a transparent attempt to give effect as a designation of beneficiary to a transaction that does not meet the statutory standard.[24]

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[23] Reliance on the contrary terms of a separation agreement would accordingly be unfounded. See *Wissner* v. *Wissner*, *supra*, 338 U.S. at 661.

[24] *Stratton* v. *Servicemen's Group Life Insurance Co.*, *supra*, 422 F. Supp. at 1122, and *Weymann* v. *Wilson*, *supra*, 320 F. Supp. at 989, suggest in dictum that persons claiming under divorce decrees that embody property settlement agreements may have viable suits against the estates of deceased service members for breach of contract. That question is not presented here, because the Maine court impressed with a trust the very proceeds that Prudential was to pay Donna Ridgway under Sgt. Ridgway's SGLI policy. While we take no position on the question whether a suit against an estate is permissible, we note that both *Wissner* (338 U.S.C. at 659) and *Hisquierdo* (439 U.S. at 588-589) preclude award of "offsetting" or "equivalent" sums. However, neither addressed the possibility of an action against a decedent's estate. Such an action would not necessarily affect the designated beneficiary, who might not be an heir, and need not directly embroil the beneficiary in litigation. Courts construing the NSLIA have divided on the question whether a contract remedy against a decedent's estate is barred by the federal statutory scheme. Compare, *e.g.*, *McJunkin* v. *Estate of McJunkin*, 493 S.W. 2d 278 (Tex. Civ. App. 1973), with *Will of Hilton*, 88 Misc. 2d 760, 388 N.Y.S. 2d 985 (Surr. Ct. 1976).

If a constructive trust may be imposed in this case as a consequence of an agreement between Sgt. Ridgway and April Ridgway, the anti-assignment provisions of the SGLIA could be readily circumvented. For instance, effect could then be given to an agreement to designate a commercial creditor as a beneficiary. Yet, 38 U.S.C. 770(g) plainly renders such an agreement unenforceable, if it means anything at all, notwithstanding the fact that an actual designation of a creditor as beneficiary would apparently be valid. See page 16, *supra*. No different result is required here. In sum, the SGLIA provides absolute freedom of choice of beneficiary to the participating service member, but allows recognition only of those choices expressed by the service member in writing and directed to the proper office.

CONCLUSION

The judgment of the Supreme Judicial Court of Maine should be reversed.

Respectfully submitted.

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